

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No.: 3:10-CR-88-TAV-HBG
) 3:12-CV-49-TAV
DAVID CARROLL LIVINGSTON,)
)
Defendant.)

MEMORANDUM

This criminal case is before the Court on the Report and Recommendation entered by United States Magistrate Judge H. Bruce Guyton on October 7, 2015 (the “R&R”) [Doc. 43]. In the R&R, Magistrate Judge Guyton finds that Petitioner has shown by a preponderance of the evidence that he asked his attorney to file a direct appeal of his sentence and recommends that his motion to vacate, set aside, or correct his sentence [Doc. 19] be granted in part and that Petitioner be permitted to bring a delayed appeal. There have been no timely objections to the R&R, and enough time has passed since the filing of the R&R to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); Fed. R. Crim. P. 51.

After a careful review of the R&R, the Court is in agreement with Magistrate Judge Guyton’s analysis and recommendations, which the Court adopts and incorporates into its ruling. Therefore, the Court will **ACCEPT IN WHOLE** the R&R [Doc. 43]. Petitioner’s motion will be **GRANTED** in part [Doc. 19] to the extent set forth in the R&R.

In addition, a certificate of appealability shall issue with respect to Petitioner's claim that his criminal history category was improperly calculated.

ORDER ACCORDINGLY.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE